



# Instructions for Form 8275 (Revised July 1992)

## Disclosure Statement

(Section references are to the Internal Revenue Code unless otherwise noted.)

### General Instructions

#### Paperwork Reduction Act Notice

We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information if you wish to use this form to make adequate disclosure to avoid the portion of the accuracy-related penalty due to a substantial understatement of income tax or negligence or disregard of rules, or to avoid certain preparer penalties. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

- Recordkeeping.** . . . . 2 hr., 23 min.
- Learning about the law or the form** . . . . . 30 min.
- Preparing and sending the form to the IRS** . . . . 34 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form more simple, we would be happy to hear from you. You can write to both the IRS and the Office of Management and Budget at the addresses listed in the instructions of the tax return with which this form is filed.

#### Change To Note

Taxpayers and return preparers must use **Form 8275-R**, Regulation Disclosure Statement, for disclosure of positions taken contrary to Treasury regulations. Form 8275 will continue to be used for all other disclosures.

**Caution:** *With the availability of Form 8275-R, use of Form 8275 to disclose items or positions contrary to regulations will no longer be adequate.*

#### Purpose of Form

Form 8275 is used by taxpayers and income tax return preparers to disclose items or positions, except those taken contrary to a regulation, that are not otherwise adequately disclosed on a tax

return for purposes of avoiding certain penalties. The form is filed to avoid the portions of the accuracy-related penalty due to negligence or disregard of rules or to a substantial understatement of income tax. It can also be used for disclosures relating to the preparer penalties for understatements due to unrealistic positions or disregard of rules.

**Caution:** *Disclosure on Form 8275 will not avoid the portion of the accuracy-related penalty due to substantial understatement of tax on a tax shelter item.*

#### Who Should File

Form 8275 is filed by individuals, corporations, pass-through entities, and income tax return preparers.

For items attributable to a pass-through entity, disclosure should be made on the tax return of the entity. If the entity does not make the disclosure, the partner (or shareholder, etc.) may make adequate disclosure of these items.

**Exceptions to Filing Form 8275.—** Instead of Form 8275, use Form 8275-R to disclose positions taken contrary to regulations.

In addition, for purposes of the substantial understatement portion of the accuracy-related penalty, items that meet the requirements of a periodically updated revenue procedure are considered adequately disclosed on your return without filing Form 8275. For example, you will have met the requirements of Rev. Proc. 92-23, 1992-13 I.R.B. 21, for adequate disclosure of a charitable contribution deduction if you complete the contributions section of Schedule A (Form 1040), and you supply all required information. If you make a contribution of property other than cash, the statement required by the Schedule A instructions must be attached to your return.

**Note:** *This exception does not apply to the negligence or disregard of rules or regulations portion of the accuracy-related penalty or the preparer penalty for disregard of rules or regulations.*

### How To File

File all Forms 8275 with your original tax return. You also may be able to file Form 8275 with an amended return. See Regulation section 1.6664-2(c)(3) for more information. Keep a copy for your records.

If you are making adequate disclosure for items reported by a pass-through entity, you must complete and file a separate Form 8275 for items reported by each entity.

**Carrybacks, Carryovers, and Recurring Items.—**If you have carryover items which you disclosed on a prior year tax return, you do not have to file another Form 8275 for those items in subsequent tax years.

If you have carryback items which you disclosed on a tax return filed for the year in which the carryback originated, you do not have to file another Form 8275 for those items in prior tax years.

However, if you are disclosing items that are of a recurring nature (such as depreciation expense), you must file Form 8275 for each tax year in which the item occurs.

### Accuracy-Related Penalty

The accuracy-related penalty is 20% of any portion of a tax underpayment attributable to (a) negligence or disregard of rules or regulations, (b) substantial understatement of income tax, or (c) other misconduct with regard to asset valuation or pension liability overstatement.

Generally, you can avoid the negligence or disregard and substantial understatement portions of the accuracy-related penalty through adequate disclosure on Form 8275 (or Form 8275-R when the position is contrary to regulations).

The penalty will not be imposed on any part of an underpayment for which it can be shown that there was reasonable cause for your position and that you acted in good faith with respect to the position.

If you failed to keep proper books and records or failed to substantiate items properly, you cannot avoid the penalty. Disclosure will never avoid the penalty for a frivolous position.

## Negligence or Disregard of Rules

If you disclose a position taken on your return by filing a properly completed disclosure statement, you can avoid the negligence or disregard of rules portion of the accuracy-related penalty. However, your disclosure must be complete and specifically identify the item or position which is being disclosed.

Your position will not be considered sufficiently disclosed by just completing and filing a form, schedule, or line item according to the applicable instructions.

## Substantial Understatement

There is a substantial understatement of income tax if the amount of the understatement for any tax year exceeds the greater of 10% of the tax required to be shown on the return for the tax year, or \$5,000 (\$10,000 for a corporation other than an S corporation or a personal holding company as defined in section 542).

An **understatement** is the excess of:

- The amount of tax required to be shown on the return for the taxable year; **over**
- The amount of tax shown on the return for the taxable year, reduced by any rebates.

For purposes of the substantial understatement portion of the accuracy-related penalty, the amount of the understatement will be reduced by the part that is attributable to:

- An item (other than a tax shelter item), for which there was substantial authority for the treatment claimed at the time the return was filed or on the last day of the taxable year to which the return relates.
- An item (other than a tax shelter item) that is adequately disclosed on this form.
- A tax shelter item, if (1) there was substantial authority for the treatment claimed at the time the return was filed or on the last day of the taxable year to which the return relates, and (2) you held the reasonable belief that the tax treatment of the item was more likely than not the proper tax treatment.

**Tax Shelter Items.**—A tax shelter, for purposes of the substantial understatement portion of the accuracy-related penalty, is a

partnership or other entity, plan, or arrangement, whose principal purpose is to avoid or evade Federal income tax.

A tax shelter item is any item of income, gain, loss, deduction, or credit which is directly or indirectly attributable to the principal purpose of the tax shelter to avoid or evade Federal income tax.

## Income Tax Return Preparer Penalties

A preparer who files an income tax return or claim for refund is subject to a \$250 penalty for taking a position which understates any part of the liability if:

- The position has no realistic possibility of being sustained on its merits, and
- The preparer knew (or reasonably should have known) of the position, and
- The position is frivolous or not adequately disclosed on the return or on the appropriate disclosure statement.

The penalty will not apply if it can be shown that there was reasonable cause for the understatement and that the preparer acted in good faith.

In cases where any part of the understatement of liability is due to a willful attempt by the return preparer to understate the liability, or if the understatement is due to reckless or intentional disregard of rules or regulations by the preparer, the preparer is subject to a \$1,000 penalty.

As with the negligence or disregard of rules or regulations and the substantial understatement portions of the accuracy-related penalty, the preparer penalties under section 6694 generally may be avoided if a position is sufficiently disclosed and is not frivolous.

**Note:** For more information about the accuracy-related penalty and preparer penalties, and disclosure as a means of avoiding these penalties, see Regulations sections 1.6662, 1.6664, and 1.6694.

## Specific Instructions

Be sure to supply all of the information requested in Parts I and II, and, if applicable, Part III. Your disclosure will be considered adequate if you supply the information requested in detail.

## Part I

**Column (a).**—Enter a complete description of the item(s) you are disclosing. The description must identify the item and its location on the return.

If you claim the same tax treatment for a group of similar items in the same tax year, enter a description for the group of items rather than a separate description of each item within the group.

If any item you disclose is from a pass-through entity, you must identify the item as such. If you disclose items from more than one pass-through entity, you must complete a separate Form 8275 for each entity. Also, see **How To File** on page 1.

## Part II

Your disclosure must include:

- A description of the relevant facts affecting the tax treatment of the item and the nature of the potential controversy concerning the tax treatment of the item, or
- A concise description of the legal issues presented by these facts.

In addition, if you are disclosing a position contrary to a rule (such as a statutory position or IRS revenue ruling), you must identify the rule.

**Note:** *Disclosure will not be considered adequate unless the above information reasonably identifies the item, its amount, the location of the item(s) on your return, and the nature of the potential controversy to which the disclosure relates. For example, if instead of supplying the information asked for above, you attach a copy of an acquisition agreement to your return to disclose the issues involved in determining the basis of certain acquired assets, your disclosure generally will not be considered adequate.*

## Part III

**Line 4.**—Contact your pass-through entity if you do not know where its return was filed. However, for partners and S corporation shareholders, information for line 4 can be found on the Schedule K-1 (Form 1065) or on the Schedule K-1 (Form 1120S) that you received from the partnership or S corporation.